

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**UNITED STATES OF AMERICA,)
)
)
v.) **Criminal Number: 3:98CR110-REP**
)
)
**SPENCER BOWENS,)
)
)
)
)
Defendant.)****

**DEFENDANT'S APPLICATION
FOR ISSUANCE OF SUBPOENA DUCES TECUM**

COMES NOW the defendant, Spencer Bowens, by counsel, pursuant to Rules 17(b) and (c) of the Federal Rules of Criminal Procedure, and respectfully moves the Court for an Order directing the clerk's office to issue a subpoena duces tecum for

James Petrucci, Warden, and/or his Agent
FCI Otisville
Federal Correctional Institution
P.O. Box 600
Otisville, NY 10963

to produce

1. Documents or records indicating the number of staff persons working at FCI Otisville--including the medium security federal correctional institution, the adjacent minimum security satellite camp, and the adjacent federal detention center—as of the time of this subpoena being served.
2. Documents or records indicating the number of incarcerated individuals in Spencer Bowens' unit that are not vaccinated against COVID-19 as of the time of this subpoena being served.
3. Documents or records reflecting the number of individuals in the current inmate population of FCI Otisville--including the medium security federal correctional institution, the adjacent minimum security satellite camp, and the adjacent federal

detention center—that are fully vaccinated against COVID-19 as of the time of this subpoena being served.

4. Documents reflecting the circumstances in which Bureau of Prisons employees or contractors at FCI Otisville test employees, contractors, inmates, and visitors at FCI Otisville for COVID-19 as of the time this subpoena being served.

in the Office of the Clerk, 3rd Floor, United States District Courthouse, 701 E. Broad Street, Richmond, Virginia 23219, on or before **Friday, August 27, at 12:00 noon.**

In support of this application, Mr. Bowens sets forth that James Petrucci, Warden, and/or his agent, is in possession of documents necessary for determining how he should proceed in this case.

Pursuant to the requirements of Federal Rule of Criminal Procedure 17, as set forth in *United States v. Beckford*, 964 F.Supp. 1010, 1016, 1027 (E.D.Va. 1997), in support of this application, the defendant sets forth that the records are needed to aid Mr. Spencer in litigating the pending compassionate release motion under § 603(b) of the First Step Act in this case. The defendant represents that the requested documents are evidentiary and relevant, that they are not otherwise procurable reasonably in advance of the hearing by exercise of due diligence; that the defendant cannot properly argue at his motion without such production and inspection in advance of the hearing and the failure to obtain advance inspection of these records may tend unreasonably to delay the proceedings; and, that the request for these records is made in good faith and is not intended as a general fishing expedition. *See United States v. Nixon*, 418 U.S. 683, 699-700 (1974).

The defendant further represents, in accordance with the analysis set forth in *United States v. King*, 194 F.R.D. 569 (E.D.Va. 2000), that his request is relevant and the documents requested are both admissible and specific in nature. The documents are relevant in that they are

necessary for litigating the pending compassionate release motion under § 603(b) of the First Step Act in this case. These documents are admissible under Fed. R. Evid. Rule 803(6) in that they are records kept in the ordinary course of business. The request is specific in nature in that it requests records for specific information during a specific time frame.

The defendant represents that he is in the same financial condition as when counsel was appointed to represent him in this matter, and he remains unable to pay any fees related to the production of the documents, and that the production of the requested documents is necessary to his defense.

WHEREFORE, the defendant requests that this Court order James Petrucci, Warden, and/or his agent, to produce the requested records in the office of the Clerk, United States District Court, 701 East Broad Street, 3rd Floor, Richmond, Virginia 23219, on or before **Friday, August 27, at 12:00 noon**, and that the defendant be allowed to copy the documents for use in his case in chief.

Respectfully submitted,
SPENCER BOWENS

By: _____ /s/
Counsel

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